Supreme Court, U. S.
FILED
APR 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1704

JOHN M. GRCICH,

Petitioner,

vs.

EVA JOGODA, DIANE TEGI, DARREL TEGI, CITY OF MONONGAHELA, GEORGE GUNIA, GEORGE BOSKO, GLENN McMAHAN, RUTH OSTRANDER, BOROUGH OF DONORA, ALFRED CALZACORTA, ROBERT CLARKE, WALTER GREGORY,

Respondents.

(D.C. Civil No. 77-0005)
(C.C.A. III No. 79-2021)

PETITION FOR WRIT OF CERTIORARI

MORLEY M. AZORSKY
Attorney for Petitioner
256 Second Street
California, Pennsylvania 15419
(412) 938-2517

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
4709 CLAIRTON BLVD., PITTSBURGH, PA. 15236
PHONE: (412) 881-7463

INDEX.

	Page
Petition for Writ of Certiorari	1
Appendix:	
Amendments to the Constitution of United States	9
Statute Involved	10
Opinion	11
Order of Court	18
Sur Petition for Rehearing	19
Judgment Order	21

STATUTE.

42 U.S.C. Section 1983 2,5

CONSTITUTION.

United States Constitution, Fifth and Fourteenth Amendments 5

RULE.

Supreme Court Rule 19 2

IN THE

Supreme Court of the United States

October Term, 1979

No.....

JOHN M. GRCICH,

Petitioner,

vs.

EVA JOGODA, DIANE TEGI, DARREL TEGI, CITY OF MONONGAHELA, GEORGE GUNIA, GEORGE BOSKO, GLENN McMAHAN, RUTH OSTRANDER, BOROUGH OF DONORA, ALFRED CALZACORTA, ROBERT CLARKE, WALTER GREGORY,

Respondents.

(D.C. Civil No. 77-0005)
(C.C.A. III No. 79-2021)

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Justices of the Supreme Court:

AND NOW, comes JOHN M. GRCICH by his attorney, Morley M. Azorsky, Esq., and petitions your Honorable Court for a Writ of Certiorari, as follows:

1. On the 6th day of July, 1979 the Honorable Judge Donald E. Ziegler of the United States District Court for the Western District of Pennsylvania, released an opinion and Order granting summary judgment on behalf of the defendants, in effect denying the appellant an opportunity to try his case.

On February 21, 1980, the panel of the Circuit Court of Appeals for the Third Circuit issued an opinion and order affirming the District Court.

On March 25, 1980, the said Circuit Court of Appeals denied the appellant's petition for rehearing by the Court *in Banc.*

2. This appeal is from the denying of the Petition for rehearing by the Court *in Banc* on March 25, 1980. The appellant was not allowed oral argument before the panel and did not get an opportunity to state his case before the Court *in Banc.*

This appeal is based on Rule 19 of the Supreme Court in that the Circuit Court of Appeals for the Third Circuit has sanctioned such a departure by the District Court for the Western District of Pennsylvania from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

3. The questions presented for review are as follows:

a. Does a person who is the object of a Frame and is put into jeopardy; and suffers a nervous breakdown and loses work and suffers money damages entitled to recover relief and damages under 42 U.S.C. section 1983, even though he was acquitted?

b. Whether there is sufficient evidence in the record to allow the appellant to go forward at a trial with evidence that he was framed for a crime?

c. Did the U.S. District Court properly enter Summary Judgment in favor of the Defendants, Gunia, Bosko, and McMahon?

d. Did the Court breach the standards of care, to apply the law to the evidence, within their reach?

e. Does perjured statements in the Police Federal Court Affidavits, signed by them, make them proper, in the support of Summary Judgment, against the Plaintiff, according to any procedure rules set up for Federal Courts, by the U.S. Supreme Court?

f. Whether or not the plaintiff in the District Court was obligated to answer Police Affidavits, which were obviously false, as they conflicted with previous sworn statements by them in the record?

g. Does a Police Officer have the right, *to intentionally refuse to cross any blocks on the arrest warrant, to accuse the defendant,* in which he has total disrespect for Pennsylvania Criminal Procedure Rule, then maliciously prosecute the defendant for a crime and accuse him all through Court?

h. Is there an additional duty on the Police Officer to not ignore a notice on the arrest warrant in *that this was a false arrest?* The Magistrate wrote at bottom of his copy, father of defendant stated this was a false arrest, as father knew where son was, at time of alleged crime.

i. Does granting anyone immunity, give them the right to encourage laxness and total disregard of potential harm to anyone?

j. Is a line up identification in criminal cases, required to protect the defendant or the one accused?

4. Petitioner was arrested for a robbery and then was taken to trial prior to being acquitted. There was also a hung jury. Petitioner was not guilty and the prosecution was based on malice, perjured testimony and was brought without probable cause. As a result of this prosecution petitioner suffered servere emotional stress, became ill and hospitalized, entered the service and after one month was discharged and suffered a mental breakdown. Before the arrest he was a gainfully employed taxpayer. When suit was filed in pre-trial proceedings the attorney for the Police filed a transcript of the criminal trial and later the Police Officers were deposed and still later the Police Officers filed affidavits in support of a motion for summary judgment. The affidavits clearly showed that the Police Officers had lied at the original criminal trials. It is apparent that the prosecution of the petitioner could not have been sustained without the perjured testimony.

The affidavits of the Police were unanswered by the petitioners however these affidavits themselves and the depositions and the trial testimony made it apparent that there was perjury at the trial.

The District Court and the Circuit Court of Appeals did not consider the fact that this perjury existed and that it was the cause of the arrest the trial and the pronouncement by Sweet, J.

The fact that the affidavits established that the affiants had perjured themselves makes their oaths worthless and insufficient to support a motion for summary judgment and the affidavits should not be considered by the Court.

The affidavits were unanswered because they proved the fact that affiants were guilty of perjury and the petitioner was not compelled to answer with counter affidavits setting forth the perjury as this was within the province of the Court.

Another man was arrested and accused for the same crime so the Police Officer did not accuse the petitioner on the arrest warrant, nevertheless the prosecution continued until petitioner was ultimately acquitted.

Police were placed on notice that "this was a false arrest" at the preliminary hearing but did not investigate such fact as to attempt to find the guilty person who was not the petitioner. The police officers did not properly investigate to find the truth and protect the petitioner's rights, however they persisted in prosecuting the petitioner and perjuring themselves at the trial in an effort to convict the petitioner.

Somewhere prior to the trial of the case the elected and appointed officer should have taken steps to see that there was no prosecution as the obligation is to protect the innocent as well as the prosecution of the guilty.

The petitioner's right to the protection of a line-up was violated and denied and the alleged identification was made at the preliminary hearing after the alleged eye witnesses were coached by the prosecuting Police.

5. The Federal questions presented are the petitioner's rights under the Fifth Amendment to the Constitution of the United States as expanded by the Fourteenth Amendment, and 42 U.S.C. § 1983.

6. The District Court and the C.C.A. denied petitioner an opportunity to present his case, prove the fact that the prosecution was without probable cause because it was a FRAME and further the fact that perjury was necessary to implicate the petitioner is proof establishing the absence of probable cause. Petitioner is entitled to his day in Court in an effort to obtain relief by receiving compensation for his damages.

This whole matter stems from the fact that an improper investigation followed a claim of a robbery on December 11, 1974 and on January 1, 1975 an automobile was identified and a man arrested as the owner of the vehicle when in fact he did not own the vehicle on December 11 nor was he the robber; to justify this first false arrest the Police accused the petitioner who was an occupant of the auto on January 1, 1975, testified that they questioned all three occupants of the auto and identified the petitioner as the actor; however in the federal depositions and in the affidavits in support of the motion for summary judgment, the fact that the Police had questioned all three occupants of the auto was shown to be patently false. These false statements had misled the public officials in the prosecution of the trial of petitioner and caused the Trial Judge, who sat as a trier of fact and Law, to be misled and after acquitting the petitioner to make the pronouncement that "there is no criticism of the Monongahela Police work in this." The lies stated at the trial brought forth this pronouncement. It is the Federal records that establishes that the Police Officers lied at the trial and the pronouncement by the Trial Judge was based on facts which were not true.

From the start the petitioner was denied his constitutional rights and the malice of the Police Officers was apparent. He reported to the Police station on request, was immediately placed against the wall and searched, even before he was identified and then told he was placed under arrest; he was denied the use of a telephone to call an attorney, he was given no chance to state his alibi and have that alibi checked and was not placed in a line-up. He was arrested without a warrant. He was incarcerated and taken to the preliminary hearing in handcuffs and was not accused on the arrest warrant as someone else had been arrested first and there was only one robber. At the preliminary hearing the witness saw only the petitioner and allegedly made the identification. The lies and improper identification, due to the fact that petitioner did not fit the description of the robber, could at best for the Police Officers result in a hung jury, which occurred; retrial was demanded by the Police Officers as they wished to convict the petitioner even though he was not guilty. At the ensuing trial, even though one Police Officer made the false statement that petitioner was a convicted shoplifter and was caught in that lie when the Judge requested the record, and even though the witnesses changed the description of the robber, and even though one of the Police lied about questioning persons that fit the description of the robber including the third occupant of the automobile which visited the establishment on January 1, 1975, the result was that the petitioner was found NOT GUILTY. The lies were obvious however the lie about questioning Jeffrey Evans was not known by the Judge to be a lie and as the result the Judge did not consider the malice and made his pronouncement.

It is apparent that both the District Court and the Circuit Court of Appeals placed undue weight on the pronouncement by the Trial Judge which was based on the lies of the Police.

After the acquittal the Police were still trying to arrest the petitioner and the petitioner suffered damages from the actions of the Police causing him to be under jeopardy when he was not guilty. Petitioner's medical records are part of the pre-trial of this case. Because of the damages he suffered the petitioner requested relief and filed this suit for damages.

8. This case is one which demands to be tried, it is an unusual case, the petitioner is not incarcerated, and was acquitted; however his constitutional rights were violated and as the result of this violation he suffered irrepairable damages and seeks not only a money judgment but also punitive damages.

And the petitioner will ever pray this Honorable Court grant a Writ of Certiorari in this case.

Respectfully submitted,

MORLEY M. AZORSKY,
Attorney for Petitioner,
256 Second Street,
California, Pa. 15419.

APPENDIX

Amendments to the Constitution of United States

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute Involved

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.
(R.S. § 1979.)

Opinion

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN M. GRCICH,

Plaintiff,

vs.

DIANE TEGI, DARREL TEGI, GEORGE GUNIA, GEORGE BOSKO, GLENN McMAHON,

Defendants.

Civil Action 77-5

Ziegler, District Judge

I. *History of Case*

Plaintiff, John M. Grcich, instituted this action pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights in connection with an arrest and prosecution for armed robbery. Defendants, George Gunia, George Bosko, and Glenn McMahon, are police officers of Monongahela, Pennslyvania, (hereinafter the Police Officer defendants), who participated in the investigation and arrest of plaintiff. Defendants, Diane Tegi and Dar-

rel Tegi (hereinafter the Tegis), are eyewitnesses to the robbery. They provided descriptions of plaintiff to the police and identified Grcich as the perpetrator in the various state court criminal proceedings.

Presently before the court are the motions for summary judgment with supporting affidavits filed by the Police Officer defendants. By order of this court dated May 25, 1979, Grcich was notified that the court would consider *sua sponte* motions for summary judgment on behalf of the Tegis on the date set for argument on the motions of the Police Officer defendants.[1]

After consideration of the uncontradicted affidavits of the Police Officer defendants, the depositions and other matters of record, the briefs submitted by the parties, and the arguments of counsel at the hearing on July 2, 1979, we hold that: (1) the record establishes good faith on the part of the Police Officer defendants as a matter of law; and (2) the Tegis, as witnesses in judicial proceedings, are absolutely immune from suit. Accordingly, summary judgment must be entered on behalf of all defendants in this action.

---

[1] The Tegis are not represented by counsel and have not appeared on their own behalf throughout the proceedings on this action. However, since plaintiff has been given sufficient notice, the district court can and should consider *sua sponte* a motion for summary judgment on their behalf. *See* 8 *Wright & Miller,* Federal Practice and Procedure: Civil § 2719, at 454.

II. *Statement of Facts*

A review of the uncontested affidavits of the Police Officer defendants and other materials of record reveal the following facts. On December 11, 1974, an individual entered the "Italian City" Pizza Shop in Monongahela, Pennsylvania, pointed a firearm at the employees and demanded money from the cash drawer. The three employees, the Tegis and Eva Jagodi, notified the police and provided detailed descriptions of the actor. An investigation was initiated; however, no suspects were apprehended until January 1, 1975, when an individual entered the Italian City Pizza Shop and was immediately recognized by the Tegis and Jagodi as the perpetrator of the robbery in question. After making a purchase, the individual left the shop. Darrel Tegi observed the individual enter an automobile and copied the license number. The license number was given to the Monongahela Police Department, and subsequently traced to a Mark Babbington. A warrant was issued for the arrest of Babbington on January 2; however, when the officer went to execute the warrant, he realized that Babbington did not meet the description provided by the eyewitnesses. The officer proceeded to question Babbington regarding his trip to the Pizza shop on the prior evening. Babbington admitted visiting the shop with Grcich. His description of plaintiff matched the one given by the Tegis and Jagodi.

Subsequently, the Monongahela police contacted plaintiff and requested that he come to the police station for questioning. Officer McMahon interviewed plaintiff con-

cerning the robbery. In the officer's view, plaintiff's responses were evasive and evidenced guilt. Based on these observations, and the facts already within his knowledge, including the description of Grcich by the Tegis and Babbington's statement, Officer McMahon arrested plaintiff.

Plaintiff was arraigned and a preliminary hearing was conducted. At the preliminary hearing, the Tegis and Eva Jagodi positively identified Grcich as the actor. The grand jury then returned a true bill of indictment in the Court of Common Pleas of Washington County, Pennsylvania. The matter was called to trial before a jury and resulted in a mistrial due to a hung jury. The district attorney chose to retry the case. In a nonjury proceeding before the Honorable Charles G. Sweet, plaintiff was acquitted.[2]

---

[2] Judge Sweet undertook what he described as the "unusual step" of explaining his acquittal on the record. He stated that the "identification testimony seems to be honest and unshaken." However, in light of various circumstantial evidence in Grcich's favor, he concluded:

> If I must make a mistake one way on this, I choose to make the mistake by saying that there are three young people that have made an honest error in identification. . . . The principle of reasonable doubt being as strong as it is, I am going to have to say that I have some doubt in my mind. Tr. at 152.

Interestingly, Judge Sweet commented on the work of the police by noting: "There is no criticism of the Monongahela police work in this. They had an identification from reasonable persons." Tr. at 153.

III. *Discussion*

Where a plaintiff alleges a deprivation of constitutional rights by a police officer under 42 U.S.C. § 1983, the officer is entitled to a conditional or qualified immunity. *Pierson v. Ray,* 386 U.S. 547, 557 (1967). A police officer cannot be held liable if he acts upon a good faith belief that his conduct is proper and reasonable. *Alfred v. Svarczkopf,* 573 F.2d 1146, 1153 (7th Cir. 1978). When a court evaluates police conduct relative to an arrest, the guideline is good faith and probable cause. *Pierson v. Ray, supra.*

Although, as a general proposition, the question of qualified immunity is a matter for factual resolution, *see, Fidtler v. Rundle,* 497 F.2d 794, 801-802 (3d Cir. 1974), it is clear the issue need not always be resolved by a jury. Thus, summary judgment is appropriate in a § 1983 damage claim where the uncontradicted depositions and affidavits establish good faith. *See, Reese v. Nelson,* No. 78-1654, slip. op. at 7 (3d Cir. May 2, 1979). This principle is illustrated by the case of *Kipps v. Ewell,* 538 F.2d 564 (4th Cir. 1976). In *Kipps,* plaintiff, following acquittal on a murder charge, instituted a § 1983 claim against a sheriff and his deputy. The Court of Appeals affirmed the entry of summary judgment and stated:

> Defendants Keyser and Williams enjoy no immunity from suit, but they may avail themselves of the defense of good faith and probable cause in a § 1983 action. *Pierson v. Ray,* 386 U.S. 547, 557, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967). Although this is an affirmative defense which may be properly raised before a jury, *id.*, summary judgment may be rendered if pleadings and affidavits show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter

> of law. Fed.R.Civ.P. 56(c). When a motion for summary judgment is properly supported by affidavits, the adverse party may not rest upon the mere allegations of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial. Fed.R.Civ.P. 56(e).

538 F.2d 564, 566.

In the instant case, the uncontradicted affidavits of the police officers, and the depositions of record, establish good faith and probable cause on the part of the Police Officer defendants as a matter of law. Collectively, they reveal that none of the officers had any prior contact or dealings with any member of the Grcich family. Moreover, there is no evidence of any prior relationship between the officers and the Tegis. Grcich admits he never even met the Tegis prior to his arrest. Accordingly, malice cannot be inferred from the facts of record.

The issue of probable cause is a question for the court. *See, DeSalle v. Penn-Central Transportation Co.*, Pa. Super., 398 A.2d 680, 683 (1979). When Officer McMahon arrested plaintiff, he possessed sufficient facts to constitute probable cause. The officer knew that three eyewitnesses had identified Grcich as the actor, and also that Babbington had confirmed that plaintiff was in the Pizza Shop on January 1, 1975, thereby corroborating their statements. These facts, coupled with the observed suspicious behavior of plaintiff during questioning, constituted probable cause for the arrest.

The only allegation against the Tegis in either the amended complaint or the pretrial statement relates to the contention that they lied at the various state court

criminal proceedings. The law is clear that witnesses in judicial proceedings are absolutely immune from civil suits based on their testimony. *Brawer v. Horowitz,* 535 F.2d 830, 836-837 (3d Cir. 1976). Moreover, such testimony does not constitute state action; therefore, the § 1983 claim against the Tegis must be dismissed on that ground as well. *Blevins v. Ford,* 572 F.2d 1336 (9th Cir. 1978); *Bennett v. Passic,* 545 F.2d 1260 (10th Cir. 1976).

In sum, we hold that the Police Officer defendants have established good faith as a matter of law and further that the Tegis are absolutely immune from suit. Accordingly, summary judgment will be entered on behalf of each of the remaining defendants in this action.

An appropriate order will follow.

DATED: July 5, 1979

DONALD E. ZIEGLER,
United States District Judge.

cc: Morley M. Azorsky, Esq.,
256 Second Street,
California, PA 15419.

Herbert Bennett Conner, Esq.,
3180 U. S. Steel Building,
Pittsburgh, PA 15219.

Diane Tegi,
319 Second Street,
Monongahela, PA 15063.

Darrel Tegi,
1597 BEvan Road,
Pittsburgh, PA 15227.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN M. GRCICH,

Plaintiff,

vs.

DIANE TEGI, DARREL TEGI, GEORGE GUNIA, GEORGE BOSKO, GLENN McMAHON,

Defendants.

Civil Action 77-5

ORDER OF COURT

AND NOW, this 6th day of July, 1979,

IT IS ORDERED that summary judgment be and hereby is granted on behalf of the defendants, Diane Tegi, Darrel Tegi, George Gunia, George Bosko and Glenn McMahon.

DONALD E. ZIEGLER,
United States District Judge.

cc: Morley M. Azorsky, Esq.,
Herbert Bennett Conner, Esq.,
Diane Tegi,
Darrel Tegi.

***Sur* Petition for Rehearing**

UNITED STATES COURT OF APPEALS

For the Third Circuit

No. 79-2021

JOHN M. GRCICH,

Appellant,

v.

EVA JOGODA, *et al.*

(C. A. No. 77-0005)

Present: SEITZ, *Chief Judge,* VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, HUNTER, WEIS, GARTH, HIGGINBOTHAM and SLOVITER, *Circuit Judges.*

The petition for rehearing filed by Appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the deci-

sion having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *in banc*, the petition for rehearing is denied.

BY THE COURT,

ARLIN M. ADAMS,
Circuit Judge.

Dated: March, 25, 1980.

Judgment Order

UNITED STATES COURT OF APPEALS

For the Third Circuit

NO. 79-2021

JOHN M. GRCICH,

Appellant,

v.

EVA JOGODA, DIANE TEGI, DARREL TEGI, CITY OF MONONGAHELA, GEORGE GUNIA, GEORGE BOSKO, GLENN McMAHAN, RUTH OSTRANDER, BOROUGH OF DONORA, ALFRED CALZACORTA, ROBERT CLARKE, WALTER GREGORY.

Appeal from the United States District Court
for the Western District of Pennsylvania
C. A. No. 77-0005

Submitted Under Third Circuit Rule 12(6)
February 12, 1980

Before: ADAMS, VAN DUSEN and GARTH, *Circuit Judges.*

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

ARLIN M. ADAMS,
Circuit Judge.

ATTEST:

THOMAS F. QUINN,
Clerk.

DATED: FEB 21 1980